FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2718 of 2007

Abdul Nawaz Rehman ..Applicant.

Vs.

State of Maharashtra .. ..Respondent.

Mr Shahid Azmi, Advocate for the applicant.

Mr Rajesh More, APP for the State-Respondent.

CORAM: V.C. DAGA,J.

DATED: 14.9.2007.

1. Heard learned counsel for the applicant-accused and learned APP for the State.

2. Perused bail application and the material available on record.

3. The applicant-accused is seeking bail under Section 439 of the Cr.P.C. who is arrested in C.R. No.462 of 2006 registered with Chembur Police Station, for the offence punishable under Section 489 (B), (C) read with Section 34 of the I.P.C.

4. According to the prosecution, on 21.9.2006 at about 13.00 hours one lady by name Shabana @ Riyana (Accused no.1) came to

the ice-cream shop of Mr Rajeev Jayprakash Bharadwaj, the complainant, and purchased ice-cream on tendering one note of Rs.1000/-. After the said lady left the shop the complainant realized that the said note was a fake note.

5. That soon thereafter another lady by name Shabnam @ Rizwana Feroz Shaikh (Accused No.2) in a similar manner approached the complainant and tendered one note of Rs.1000/- to purchase ice-cream, the complainant refused to give her the ice-cream. The complainant on suspicion followed the said lady and with the help of a traffic police apprehended both the ladies and took them to Chembur Police Station. The personal search of accused no.1 resulted in the recovery of fake currency of Rs. 31,000/-. F.I.R. came to be registered and accused Nos. 1 and 2 were arrested.

6. That interrogation of accused no.1 resulted in the disclosure of the name of present applicant Abdul Nawaz (accused no.3). It is alleged that he was apprehended by the Officers of the Respondent at Hyderabad on 23.9.2006. The search resulted in the recovery of two notes in the denomination of

Rs. 1000/- and 57 notes in the denomination of Rs. 500/- i.e. a total sum of Rs. 30,500/- was found. On being brought to Mumbai, he was arrested on 24.9.2006.

7. That the interrogation of accused No.3 led to the apprehension and arrest of the Accused no.5 (i.e. Niyaz Abdul Rehman) on 26.9.2006 at C.S.T. Railway Station when he was leaving for Hyderabad and 47 notes of rupees 1000/- denomination and 200 notes of rupees 500/- denomination were found from his bag. A total sum of Rs.1,47,000/-was recovered at his instance.

8. That, further interrogation of accused no.1 led to the arrest of Mohd. Mustafa (accused No.4) on 25.9.2006 from Sandhurst Road Railway Station and resulted in the recovery of fake notes of Rs. 2,50,000/-. That further interrogation of accused no.1 resulted in arrest of the Rickshaw Driver (i.e. accused No. 6 at whose instance Rs.38,000/- fake currency was recovered.

9. The applicant-accused is in custody since time of his arrest. He is seeking bail. Having seen the available material on record

in my view, on merits the applicant may not be entitled for bail but on technical ground, I am compelled to enlarge him on bail on the facts and circumstances enumerated herein.

10. The arrest panchnama (i.e. the "Atak panchnama") in case of Abdul Nawaz (the present applicant) clearly shows overwriting so far as date of the said panchnama is concerned. Secondly, in the body of the panchnama, the date of drawing panchnama is kept blank. This may prima facie; result in vitiating panchnama affecting merits of the case of the prosecution.

11. Without commenting on the submissions made, in my view, the applicant in this particular case would be entitled for bail in the peculiar facts and circumstances of the case though in case of another co-accused bail is being rejected for want of existence of such technical grounds.

12. At this juncture, it is relevant to note that the Investigation Officer, who has drawn this panchnama appears to have been grossly negligent and careless. He kept the "date" blank, may be with view to enable the accused

to claim some benefit from the said lapse.

13. This serious lapse needs to be taken serious note of.

14. If the Investigating agency itself keeps loopholes in drawing panchnama while investigating serious offences of the nature involved, one does not know what would happen to the criminal justice system.

15. The higher authorities in the Police Department are required to take serious note of it and expected to take stern action against the person who has committed this lapse; so that, message would go to everybody in the Department that any such lapse or lapses cannot go unnoticed.

16. Registrar General of this Court is directed to send the copy of this order to the Commissioner of Police and D.I.G. Mumbai for appropriate action in accordance with law against concerned Officer.

17. In the above circumstances, the applicant shall be released on bail on following terms and conditions.

a] The applicant Niyaz Abdul Rehman shall be enlarged on bail in connection with C.R. No.462 of 2006 registered with Chembur Police Station, for the offence punishable under Section 489 (B), (C),120 read with Section 34 of the I.P.C. subject to furnishing a personal bond of Rs. 25,000/- with one local surety in the like amount.

b] The applicant shall report to the above Police Station twice in a week i.e. Monday and Thursday in between 3.00 to 5.00 p.m. till conclusion of the trial.

c] The order of bail will be given effect only after the applicant furnishes to the Investigating Officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail.

d] The applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not, in any manner, tamper with

the prosecution evidence.

e] The applicant shall co-operate with the Investigating Officer in investigation.

f] Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

18. Application is disposed of in above terms.

(V.C.DAGA,J.)